IN THE HIGH COURT OF HIMACHAL PRADESH SHIMLA

CWP No. 1105 of 2006

Judgment reserved on: 31.7.2007

Date of Decision: August 27, 2007

Sushila Sharma … Petitioner

Versus

State of H.P & Ors. … Respondents.

Coram:

The Hon'ble Mr. Justice Deepak Gupta, Judge.

The Hon'ble Mr. Justice V.K.Ahuja, Judge.

Whether approved for reporting? ***yes***

For the Petitioner(s) : Mr. Ashwani Kumar Sharma, Advocate.

For the Respondent(s) : Mr. M.S.Chandel, Advocate General with Mr. J.S.Guleria, Law Officer, for Respondents 1 to 3.

Mr. Nitin Misra Advocate vice Mr. P.P.Chauhan, Advocate, for respondent No.4.

Deepak Gupta, J (Oral).

This petition clearly brings out the flaws in the transfer policy of the Government and highlights the need to have a proper and rationalized transfer policy.

It would be pertinent to mention that when this case was taken up for admission, this Court passed the following orders:-

> "This case presents a very very interesting saga of the functioning in the offices of the Director Education (Primary) as well as Deputy Director Education (Primary). The case shows that in a span of just about six months as many as six transfer orders were passed by the respondents, each one reversing the earlier order involving the petitioner and respondent No.4. We shall be very keenly awaiting the reply of respondents 1 to 3 to explain to us the reasons as well as the rationale of passing six transfer orders in a span of six months as well as the public interest involved therein and the interest of administration, if at all."

After a number of opportunities were granted, the Principal Secretary (Education) to the Government of H.P., filed an affidavit in response to the above observations. Before we deal with the same, it would be pertinent to mention that the petitioner and respondent No.4 are both teachers working in the district cadre at Kullu. They both appear to be influential and have managed, in their entire service careers to remain posted in and around Kullu. The petitioner who was a Head teacher posted at Government Primary School, Baragoan was promoted as Central Head Teacher and an order Annexure A-2 was issued on 24.12.2005 by the Director Primary Education, to the Deputy Director, Primary Education, Kullu in which it was mentioned that on promotion, she be adjusted in supersession of <u>all previous and subsequent orders</u> in GPS Lower Dhalpur. We fail to understand how an officer can pass an order in supersession of all subsequent orders. Such an order is unheard in law. Can an officer bind his successors and stop them from passing any orders.

Thereafter the respondent No.4 obtained an order on 28.2.2006 again from the Director, Primary Education addressed to the Deputy Director, Primary Education, wherein it was directed that respondent No.4 be posted in Lower Dhalpur and the petitioner be transferred to GPS Kharahal. The Deputy Director, Primary Education, Kullu sent a letter to the Director of Elementary Education, Shimla on 7.3.2006 making reference to both the orders and in which he has mentioned that Smt. Kamlesh Thakur has already joined at GPS Kharahal on 24.8.2005 and the petitioner has completed two months stay in Lower Dhalpur. He therefore, made a back reference to the Director of Elementary Education. Thereafter the Director Elementary Education, issued another order on 29th March, 2006 directing that the petitioner be allowed to continue at Lower Dhalpur and may not be disturbed. Surprisingly, the Director, Primary Education, issued another order on 24.5.2006 directing that the respondent No.4 be transferred to Lower Dhalpur by revoking the stay order of the petitioner. On 1.6.2006 another order was passed that the petitioner may be continued at Lower Dhalpur and Smt. Kamlesh Thakur who was under transfer from GPS Kharahal to GPS Lower Dhalpur be adjusted elsewhere or her transfer be cancelled. Finally, an order dated Annexure P-8 was passed on 27.7.2006 transferring the petitioner to GPS Kharahal and respondent No.4 to GPS Lower Dhalpur. It is in the contest of these contradictory transfer orders passed from time to time that the Court had passed the orders mentioned hereinabove.

The affidavit of the Principal Secretary (Education) to the Government of H.P, raises a number of grounds which make interesting reading. According to him, the orders Annexures P2 to P7 are only communications between the Director of Elementary Education and the Deputy Director of Primary Education and these inter se orders cannot be termed to be transfer orders. All that we can say is that the Principal Secretary (Education) to the Govt. of H.P. has tried to gloss over the matter. If these orders are not transfer orders why were they titled as transfer/adjustment? If they were not transfer orders why they were complied with and teachers were allowed to move from one place to another place? Admittedly, according to the respondents, the petitioner in response to the order Annexure P2 had been permitted to join at Lower Dhalpur and respondent No.4 had joined at GPS Kharahal. This clearly shows that the affidavit of the Principal Secretary (Education) is incorrect and false.

The Principal Secretary (Education) in para 3 of his affidavit stated as follows:-

> "3. That it is further submitted that as far as the question of emanation of proposal for transfer in each of the 6 cases, as observed by this Hon'ble Court is concerned, in this regard the following details will make the entire situation clear:-
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> i) In the first case it has been found that the petitioner on her promotion had tried to manage her adjustment at GPS, Lower Dhalpur following which communication occurred among the O/O the Hon'ble Chief Minister, the Director of Elementary Education and Deputy Director of Elementary Education as per Annexure R-1 Page 13-14 and noting page 7. However, no transfer orders on account of

this were ever issued to the petitioner as per the submissions made in para-2.

ii) In the second instance the respondent No. 4 had tried to manage her adjustment at GPS Lower Dhalpur following which communication took place among the O/O Hon'ble Chief Minister, the Director of Elementary Education and Deputy Director of Elementary Education as per Annexure R-1 Pages 15-16 noting page 8. However, no transfer orders on account of this were ever issued to the petitioner as per the submissions made in para -2.

iii) At the third time the petitioner had again tried to manage her adjustment at GPS Lower Dhalpur following which communication occurred among the O/O Hon'ble Chief Minister, the Director of Elementary Education and Deputy Director of Elementary Education as per Annexure R-1 Pages 17-18 noting page 9. However, no transfer orders on account of this were ever issued to the petitioner as per the submissions made in para -2.

iv) In the forth instance the respondent No. 4 had tried to manage her adjustment at GPS Lower Dhalpur following which communication took place among the O/O Hon'ble Chief Minister, the Director of Elementary Education and Deputy Director of Elementary Education as per Annexure R-1 Pages 19-20 noting page 10. However, no transfer orders on account of this were ever issued to the petitioner as per the submissions made in para -2.

v) In the fifth instance the petitioner had tried to manage her adjustment at GPS Lower Dhalpur following which communication took place among the O/O Hon'ble Chief Minister, the Director of Elementary Education and Deputy Director of Elementary Education as per Annexure R-1 Pages 21-22 noting page 10. However, no transfer orders on account of this were ever issued to the petitioner as per the submissions made in para -2.

vi) In the sixth instance the petitioner had tried to manage her adjustment at GPS Lower Dhalpur following

> which communication took place among the O/O Hon'ble Chief Minister, the Director of Elementary Education and Deputy Director of Elementary Education as per Annexure R-1 Pages 23-25 noting page 12. However, no transfer orders on account of this were ever issued to the petitioner as per the submissions made in para -2."

A perusal of the affidavit itself clearly shows that the Government appears to have miserably failed in running its administration in a proper manner. Any person who approaches the office of the Chief Minister is able to obtain orders of transfer/adjustment or cancellation of the transfer. The averments made by the Principal Secretary (Education) disclose a very poor picture of the administration in the State of H.P. Are the transfer to be cancelled at the whims and fancies of the employee(s)? Why were the orders passed and cancelled at the behest of these two employees (obviously influential) who had always served in and around Kullu. Both had never served in the rural/remote areas. Even Kharahal is only 10 kms from Kullu but they did not want to join there. As and when they approached the office of the Chief Minister, each managed to upstage the other and get an order in her favour.

Does anybody care about the students who were studying in the schools? If no teacher is willing to go to the rural/remote areas, where will the students of these rural and remote areas study? When the employees want a job then they are willing to join at any place. However, soon-thereafter, political patronage is employed to get themselves transferred to a particular place. This case clearly shows that transfers are made

for extraneous reasons and without considering the administrative exigencies and the interests of the students.

We are constrained to hold that numerous contradictory orders were passed at the instance of the Additional Secretary to the Chief Minister, which clearly shows that there is day to day interference in the administration of the department. What were the administrative exigencies in canceling and passing as many as six orders in a short span? No explanation has come forth. In fact the explanation (if it can be said to be that) is that the petitioner and respondent No.4 managed to get these transfer/adjustment orders. This does not speak well of the system of the administration. We are clearly of the view that normally we would not like to interfere in transfer orders passed in administrative interests. We are also of the considered view that all the employees, such as teachers, doctors, nurses etc., will necessarily have to be posted in rural/remote areas at some stage in their careers. The administration has to be stern and strict in matters of transfers. It also has to be fair and just and should treat all the employees equally. It is only because the administration itself is lax and transfer orders are passed on extraneous considerations and the administration reverses its decisions day in and day out, that the courts and the tribunals are forced to intervene. These type of cases clearly highlight the fact that transfers are being made not on the basis of administrative exigencies but on other extraneous considerations.

In fact this Court in CWP No. 503 of 2007 titled ***Gurdev Jassal v. State of H.P. & ors***, decided on 21.5.2007 had even deprecated

the practice of stay orders being granted by the judicial tribunals and authorities in matters relating to stay. The observations of this Court are relevant in the present case also, which read as follows:

> "We have also noticed a growing trend that while granting stay in transfer cases the judicial authorities do not take into consideration the adverse impact which such orders may have on the general public. Stay orders are granted at the instance of the applicants resulting in one or more than one officers of the same rank being posted at one place against one vacant post, like in the present case. This results in the public suffering at the place where no officer is posted and the office remaining vacant. We can take judicial notice, and in fact we have noticed in a large number of cases that due to stay orders being granted, posts of Teachers and Doctors in remote areas keep lying vacant. After obtaining the stay orders, the officers are in no hurry to get their matter heard. Why should the students in schools suffer for lack of Teachers? Why should the patients suffer in the absence of the Doctors? This court cannot shut its eyes to these important questions. In our considered opinion, while deciding the question whether stay should be granted or not in the matters regarding transfer of the employees, the judicial authority must keep in mind the interest of the public also. We are also of the view that where the applicant-petitioner has a strong case, it is better to decide the case itself and quash the transfer orders rather than granting a stay which continues for an indefinitely long period."

However, when facts like those in the present case come to light, the Court has no option but to intervene in the matter. The authorities by acting recklessly and by changing their orders frequently unnecessarily invite interference from the Courts. It would be much better if the authorities themselves acted in a

more judicious manner and if transfers are made only taking into consideration the administrative exigencies then there should be no reason to interfere.

As far as the present case is concerned, we feel that the petitioner who always remained posted in and around Kullu has no vested right to continue there that too on promotion. Though the action of the respondents is improper, she is not entitled to any relief.

We, accordingly, dismiss the petition. We, however, direct that a copy of this judgment be sent to the Chief Secretary to the Govt. of H.P. , who shall ensure that a proper transfer policy is formulated to ensure that the transfers are made only on administrative grounds and not on any others grounds. In the policy to be framed, it shall be ensured that all the employees are treated fairly and equally and every employee during his tenure of service serves in tribal/hard areas and also in remote/rural areas. When transfers are made, the administrative department shall ensure that the employees who have already served in tribal/hard areas as well as remote/rural areas are not again sent to these areas and there is a continuous process of change whereby all the employees have a chance to serve in tribal/hard areas as well as remote/rural areas. In the policy so framed, It should also be ensured that the transfer orders are not cancelled without making reference to the administrative department to put-forth its views. In the policy, measures shall be provided to ensure that employees (obviously influential) who have managed to remain posted in the urban areas/cities are posted to rural/remote areas and

hard/tribal areas in the transfer season when the transfers are made. The transfer policy should also ensure that people, who are posted in remote/rural areas, join their place of postings and do not manage to get their transfers cancelled on frivolous grounds as has happened in the present case. The policy be framed and filed in Court within two months from today. The Chief Secretary shall file his affidavit of compliance on or before 29th October, 2007 when the matter be listed in Court for this purpose only.

The petition is disposed of in the aforesaid terms.

(Deepak Gupta), J.

August 27, 2007 (V.K.Ahuja), J.

s.